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No. 07-1376

Supreme Court, U.S.
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In The
Supreme Court of the United States

CITY AND COUNTY OF SAN FRANCISCO,
SERGEANT JEFF BARRY,
OFFICER MICHELLE LIDDICOET, and ALEX FAGAN,

Petitioners,

v.

RODEL RODIS,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITIONERS' REPLY SUPPORTING PETITION FOR WRIT OF CERTIORARI

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1. Although, given Respondent's delay in filing his Brief in Opposition, it is too late to calendar this case for argument with *Pearson v. Callahan*, the Court nonetheless should grant certiorari on the first question presented, namely, whether probable cause for passing a counterfeit bill requires evidence of intent above and beyond the passing of the bill. Respondent is correct that the facts of *United States v. Everett*, 719 F.2d 1119 (11th Cir. 1983), and *United States v. Hernandez*, 825 F.2d 846 (5th Cir. 1987), were different from the facts below. But, that is unremarkable and irrelevant. By definition, all cases involving probable cause involve different facts. That observation does nothing to change the reality that there are now conflicting rules among the circuits about the probable cause requirements for an arrest on suspicion of passing counterfeit currency. In the Ninth Circuit, an arresting officer must now have evidence of intent to defraud above and beyond the act of passing the bill. By contrast, in the Fifth and Eleventh Circuits, the officer can arrest based on the passing of the bill without additional evidence of intent beyond the passing itself. This is a square conflict among the circuits on an important issue, and for the reasons stated in the Petition, the split is worthy of certiorari.

2. Should the Court decline to grant certiorari on the first question presented, it still should hold the Petition for decision in *Pearson*. Respondent attempts to distinguish the Ninth Circuit's ruling on qualified immunity from *Pearson* by citing numerous "facts"

that (i) are inaccurate, and (ii) in any event were not mentioned in the decision below. Petitioners will not, in this brief, refute the numerous inaccurate factual assertions by Respondent, because those assertions do not change the fact that in both *Pearson* and the decision below, the courts defined the applicable right at the highest level of generality possible, thereby creating an analytical framework that made the denial of qualified immunity a logical inevitability. Moreover, in both cases the courts denied qualified immunity despite the fact that the only cases on point at the time had concluded that similar conduct *did not* amount to a constitutional violation. These factors are dispositive of the qualified immunity issue, and Respondent has said nothing to refute either of them. Indeed, the similarities are so stark that the Court, assuming that it reverses the Tenth Circuit in *Pearson*, should, as it did in *Brosseau v. Haugen*, 543 U.S. 194 (2004), summarily reverse the decision below rather than granting, vacating, and remanding.

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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